MOTION FILED
AUG 14 1981

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 80-5727

MONTY LEE EDDINGS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*, THE WASHINGTON LEGAL FOUNDATION

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August 12, 1981

Washington, D.C. • THIEL PRESS • (202) 638-4521

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MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Washington Legal Foundation (WLF or Found tion) moves this Court pursuant to Supreme Court Rul 36 and 42 for leave to file the annexed brief *amicus cu iae* in the above-captioned proceeding in support of t State of Oklahoma. Counsel for Petitioner has been co tacted and refused to consent to WLF's participatio Counsel for the State of Oklahoma has also been co tacted and takes no position on WLF's motion.

The Washington Legal Foundation is a nonprofit, ta exempt public interest law firm organized and existi under the laws of the District of Columbia for the pu

pose of engaging in matters affecting the broad
interest. WLF has more than 80,000 members a
porters throughout the United States whose i
the Foundation represents.

The Washington Legal Foundation has appeared
this Court as *amicus curiae* on numerous occasion
amicus curiae have been filed with and accepted
Supreme Court in the following recent cases: *Wil
Zbaraz*, 100 S.Ct. 2694 (1980); *Consolidated Edi
of New York v. Public Service Commission of th
of New York*, ___ U.S. ___ , 100 S.Ct. 2326
United Steel Workers v. Weber, 443 U.S. 193
Carbon Fuel Company v. United Mine Workers, 4
939 (1979); *Personnel Administrator of Mass. v.*
442 U.S. 322 (1979); *Parklane Hosiery Co. v. Sho*
U.S. 323 (1979); *Federal Trade Commission v. S
Oil Co. of California*, ___ U.S. ___ , 100 S.Ct. 62
San Diego Gas and Electric Co. v. City of San D
U.S.L.W. 4306 (1981); *Rostker v. Goldberg*, 49 U
4798 (1981); *Moody v. Forresster*, ___ U.S. ___
S.Ct. 1733 (1981); *First National Maintenance*
NLRB, 49 U.S.L.W. 4762 (1981).

More specifically, WLF participates in and
a substantial portion of its resources to matter
criminal justice and related constitutional issues.
concern for the physical, psychological, and fina
pact crime has on its victims, their families, and
has led to the Foundation's establishment of
Victims Program. This program is designed to
the rights of crime victims and to help reduce th
ing crime rate in America. Among other a
WLF provides legal guidance and assistance to
tims of violent crime, participates in rulemak
ceedings before the U.S. Parole Commission, a

itors those criminal cases in which the courts hav
too lenient in sentencing violent criminals or
wise have exhibited an insensitivity to the rights
tims and the general public.

In the instant case, WLF seeks to advance the i
of its members and the public by urging this
consideration of the rights of law-abiding citize
victims of violent crime, and of the States in pro
their citizens from murders and other acts of extre
lence. The Foundation believes that the States n
permitted to establish their own capital puni
guidelines within the meaning of the Eighth and
teenth Amendments of the Constitution and th
Oklahoma statute in question is thus a legitima
stitutional response to the brutal murder of a law e
ment official.

WLF can bring to this case a perspective not pr
represented which may assist in obtaining full co
ation of public interest issues. The present parties
case are primarily concerned with the end results
lawsuit. WLF is concerned with the broader publi
est issues indicated above and in providing a bal
the arguments in this case. WLF's concern in this
to protect the rights of any State to impose puni
within established constitutional guidelines in o
protect society from violent and repetitive crimin
duct.

Accordingly, the Washington Legal Fou
fully requests permission to participate a
in the case at bar.

Respectfully submitte

Daniel J. Popeo
General Counsel

Paul D. Kamenar
Director of Litigati

Nicholas E. Calio
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INTERESTS O
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(A. 66) When Officer Crabtree signalled Eddings to pull off the road, he did so. Eddings then asked for the sawed-off shotgun which was on the front floorboard. However, the passenger in the front seat with Eddings placed the gun behind the driver's seat. (A. 34)

Nevertheless, petitioner reached behind the seat for the sawed-off shotgun and loaded it. (A. 65) Meanwhile, Officer Crabtree unsuspectingly approached the car from behind. When the officer was six to eight feet away, Petitioner tilted the gun out the window and unloaded the blast into Officer Crabtree's chest. (A. 54) Officer Crabtree died within a matter of seconds to minutes. (A. 23)

Petitioner immediately drove off, but was arrested a short time later. (A. 34) While in custody, he threatened the lives of other police officers on two separate occasions. (A. 77, 103)

Pursuant to Oklahoma law, Petitioner was certified to stand trial as if he were 18 years of age, pleaded *nolo contendere,* and was sentenced to death after a full and fair hearing on all mitigating and aggravating circumstances surrounding the killing.

Petitioner now challenges his sentence solely on the ground that he was not quite 18 years old at the time of the murder, and therefore, is protected by the Eighth Amendment.

SUMMARY OF ARGUMENT

Petitioner's argument that capital punishment can never be constitutionally imposed upon a criminal who is under the age of eighteen at the time of his or her crime lacks merit. The Oklahoma statute under which Petitioner was sentenced provides clear sentencing guidelines as well as automatic appellate review of any sentencing

decision. In addition, it provides for consideration of "any" factors mitigating the crime, including the criminal's age.

Imposing capital punishment on Petitioner does not constitute "cruel and unusual punishment" under the Eighth Amendment solely because of his age. Age has never been adjudicated a preclusive bar to punishment and Petitioner here was properly certified to stand trial and be punished as an adult for the premeditated, unprovoked murder of a police officer. In imposing the death penalty, the State court amply considered the offender's age and extensive psychological testimony and concluded that his age, although a mitigating factor, did not outweigh the aggravating factors. This Court should not second guess the State court on this score.

The adoption of an absolute bar to capital punishment based on age as suggested by Petitioner would be inconsistent with previous decisions of this Court and would interfere with the legislative prerogatives of the States. Such a decision would effectively nullify the power of the States to decide matters within their sphere of influence and would limit the ability of the States to protect their law-abiding citizens. Therefore, this Court should uphold the sentence imposed upon the Petitioner based upon the facts of the instant case as a matter of sound public policy.

ARGUMENT

I.

OKLAHOMA'S CAPITAL PUNISHMENT STATUTE WHICH IS NEITHER ARBITRARY NOR CAPRICIOUS AND WHICH PROVIDES FOR INDIVIDUALIZED SEN TENCING AND AUTOMATIC REVIEW, SATISFIES THE REQUIREMENTS OF THE EIGHTH AMENDMENT AS APPLIED TO PETITIONER.

Petitioner argues that the Eighth Amendment's pro bition against "cruel and unusual punishment" acts as absolute bar to imposing the death penalty on any m derer who – regardless of past criminal conduct, frame mind, and the heinous nature of the murder committed happens to be less than age eighteen at the time the m der was committed. Resolution of that question in P tioner's favor would at once require a rejection of principles previously announced by this Court in de penalty cases and deny the States the practical ability decide criminal matters of State concern within bounds of the United States Constitution.

The Oklahoma capital punishment statute under wh Petitioner was sentenced satisfies the constitutional st dards mandated by this Court under the Eighth Amen ment. It provides clear sentencing guidelines and proc ures as well as automatic appellate review of the sente ing decision. While the sole issue in the case at ba whether a valid death penalty statute is constitution applicable to a sixteen year old killer who was prop certified to stand trial as an adult, it is useful to bri review this Court's previous pronouncements on the c stitutionality of death penalty statutes as a framew for examining the application of the Oklahoma law Officer Larry Crabtree's murderer.

Petitioner's argument that the death penalty may n be constitutionally imposed upon a murderer who

under age eighteen at the time of his crime lacks merit i light of the previous decisions of this Court. This Cour has repeatedly recognized that a capital punishmen statute passes constitutional muster if certain factors ar present. *Gregg v. Georgia*, 428 U.S. 153 (1976); *Profit v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S 262 (1976); *cf. Roberts v. Louisiana*, 428 U.S. 32 (1976); *Lockett v. Florida*, 438 U.S. 586 (1977); *Bell v Ohio*, 438 U.S. 637 (1978). The statute must focus "o the particularized nature of the crime and the particula ized characteristics of the individual defendants," an take into account "the main circumstances of aggrava tion and of mitigation that *should be weighed, an weighed against each other* . . ." to avoid arbitraty impo sition of the deaty penalty. *Gregg v. Georgia, supra*, a 153, 206 (Citing Model Penal Code §201.6, Comment p. 71, Tentative Draft No. 9) (emphasis in original) Moreover, the additional safeguard of direct appellat review ensures that capital punishment will not be arb trarily or capriciously imposed. *Id.* at 196-198. *See also Profitt, supra; Jurek, supra; Roberts, supra; Locket supra.*

In *Profitt*, 428 U.S. 242, the Court summarized it reasons for upholding Florida's death penalty statutes i language which is instructive here:

> That legislation provides that after a person is convicted of first degree murder, there shall be an informed, focused, guided, and objective inquiry into the question whether he should be sentenced to death. If a death sentence is imposed, the sentencing authority articulates in writing the statutory reasons that led to its decision. Those reasons . . . are conscientiously reviewed by a Court which . . . can assure . . . the evenhanded operation of state law. *Id.* at 259-60.

Similarly, the Court in *Jurek*, 428 U.S. 262, fou

> By authorizing the defense to bring before t
> at the separate sentencing hearing whateve
> gating circumstances relating to the ind
> defendant can be adduced, Texas has ensur
> the sentencing jury will have adequate guid
> enable it to perform its sentencing functio
> providing prompt judicial review of the jury
> sion . . . Texas has provided a means to p
> the evenhanded . . . imposition of death sen
> *Id.* at 276.

The Oklahoma statute clearly falls within t
stitutional guidelines. First, it provides for "
focused, guided, and objective inquiry" into
sition of the death penalty. *Profitt, supra*, at 2
21 O.S. Supp. 1978, Section 701.10 expressly
sentencing proceedings for first degree murder
the sentencing hearing is bifurcated from th
allow the defendant or the State to present evi
argument pertinent to the penalty. Evidenc
presented as to *any* mitigating or aggravatin
stances. Moreover, aggravating circumstances
latively defined in Section 701.12 of the stat
Section 701.13 specifically enumerates jur
tions. If the jury is unable to agree on the pu
the judge *must* impose life imprisonment.
701.11. Thus, rather than allowing the "standa
unchanneled imposition of death sentences," c
found infirm in *Godfrey v. Georgia*, ___ U.S.
S.Ct. 1759, 1765 (1980), Oklahoma has pro
sentencing authority with firm, explicit guidelin

Oklahoma's statute also requires that a deat
be appealed within ten days following the t
decision. In accordance with this Court's g

Jurek, Oklahoma's immediate, direct appeals "provide[s] a means to promote the evenh imposition of death sentences." 428 U.S. at 2 the Oklahoma statute does not suffer from constitutional infirmities previously recogniz Court and no sound reason can be advanced f ing its application in the instant case.

Simply stated, Oklahoma's statute confor constitutional safeguards mandated by this cannot by its terms be applied in a discrimin ner whether on the basis of sex, race, or age. below amply considered Petitioner's age and he was still subject to the death penalty. The statute is neither arbitrary nor capricious as ap

II.

IMPOSING CAPITAL PUNISHMENT ON A MU WHO WAS UNDER THE AGE OF EIGHTEEN TIME OF HIS CRIME DOES NOT CONSTITUT AND UNUSUAL PUNISHMENT.

The imposition of capital punishment on who was not quite eighteen years old at the crime does not violate the Eighth Amendm Constitution. Age, in and of itself, has never b

---

[1] Under Title 21 O.S. Supp. 1978 §701.13, th Court of Criminal Appeals is required to determine:

1) whether the sentence of death was imposed influence of passion, prejudice, or any other factor;

2) whether the evidence supports the . . . judge' of a statutory aggravating circumstance as en in this Act; and

3) whether the sentence is excessive or disprop to the penalty imposed in considering both and the defendant.

cated a preclusive bar to punishment addition, it has long been recognized be transferred to adult courts to be tri Indeed, punishment of certain juvenil consistent with well-established socie case at bar, imposition of capital pu excessive nor disproportionate in light mitted and the defendant's attitude a Petitioner's sentence is fully consisten of the Eighth Amendment and must Court.

A. Neither Certification of This C as an Adult Nor the Subsequer a Capital Sentence Under the C This Case Violate Any Previous stitutional Principle.

Amicus submits that neither certifi derer for trial as an adult under a car tory scheme nor the subsequent imp sentence violate any previously annou principle. This Court has refused to pect class" under the Constitution. *of Retirement v. Murgia*, 427 U.S. 3(*Bradley*, 440 U.S. 93 (1979). In ad considered a criminal's biological ag than a mitigating factor to be cons sentences on a murderer. *Roberts v.* 325, 333-34; *Lockett v. Ohio*, 438 U.

Similarly, this Court has never fou criminal alone transforms an other punishment into a "cruel and unu *Ingraham v. Wright*, 430 U.S. 657 stated that the Cruel and Unusual Pur

its the punishment which can be in
three ways:

> First, it limits the punishment tha
> on those convicted of crimes . . . se
> punishment grossly disproportiona
> of the crime . . . and third, it im
> limits on what can be made crimi
> as such. 430 U.S. at 667.

Nowhere in those standards is there
punishment of non-suspect classes o
man v. Georgia, 408 U.S. 238, 240
concurring). *See also Spinkellink*
F.2d 582, 616 (5th Cir. 1978), *cert.*
reh. den. 441 U.S. 938 (1979).

A favorable resolution of Petiti
impose inflexible rules upon the crim
of the States. *See Barker v. Wingo,*
25 (1972). While Petitioner's cer
not in issue here, it bears noting tha
recognized that "not all juveniles c
special features of the juvenile cou
transfer to an adult court should b
v. Jones, 421 U.S. 519, 535 (1975)
v. Pennsylvania, 403 U.S. 528, 5
United States, 383 U.S. 541 (1966
cation of a juvenile to stand trial a
imate aspect of the juvenile code. . .
616 P.2d 1162, 1166 (Okl. Crim.
of M.E., 584 P.2d 1340 (Okl. Crim
denied, 436 U.S. 921 (1978).

That some juveniles may be pro
and indeed, must be tried as adul
tect society, is underscored by the
States have statutory systems for

niles" as adults in criminal pr
tioner at 46, 57. As a prac
invalidate Petitioner's sentence,
add new, inconsistent dimens
nouncements on the constitu
ishment and the meaning of
ment. Moreover, this Court
nullify the right of the States
biological juveniles have acted
and punished as adults for the
lic. Therefore, the Washingt
mits that public policy consid
Court, consistent with its past
[Petitioner] was certified to
was certified to be punished
State, supra, at 1166.

**B. Imposition of Capital Pu
Accords With Societal St
Interest.**

Petitioner's claim that sent
lates society's standards of d
scrutiny. Certainly, the A
lightly impose capital punish
Nonetheless, an examination
reflect society's " 'evolving
Gregg, 428 U.S. at 173, indi
been forced to conclude th
required in certain specified
v. Dulles, 356 U.S. 86 (1958).

Recent public surveys pro
of Petitioner's claim. On Jun
published a nationwide poll in
questioned favored wider us

TIME, June 1, 1981 at 13, col
Gallup Poll published in the *W*
that 66 percent of the public fa
in 1981 as opposed to 49 perce
TON POST, June 26, 1981 at A-

Perhaps the most telling indi
on capital punishment is found
by the various States. In the
Court's decisions in *Furman v.*
and *Gregg*, 428 U.S. 153, thirty-
penalty statutes. *Eddings v. Sta*
Presently, the number of States
laws remains at thirty-five. Brie
89.[2] Only six of those States sta
tion of the death penalty on t
biological age. *Id.* at 53, n.8
States, a sixteen-year old is subj
ceedings and, therefore, capital
may be a factor to be consider
tence, it is not an absolute ba
Thus, these State statutes reflec
that certain individuals who are
capable of possessing the judgm
of those individuals who *are* 18.[3]

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[2]Ohio recently passed a new capita
INGTON POST, July 17, 1981 at 13,

[3]Public sentiment on the death p
by Federal legislative activity. The
ently considering S. 114, a bill to
establishing "rational criteria for the
97th Cong., 1st Sess. (1981). S.114
ment may be imposed in cases in whi
age of majority. The bill includes co
age as a mitigating factor, but does n
bar to capital punishment. S.114, §3

Public sentiment about
age of 18 as if they were 1
of violent juvenile crime.
this growing problem sub
and trial. By virtue of a
Supp. 1978, §1104.2, Ok
and seventeen year olds w
tried as adults.

Likewise, the legislature
uncontrollable incidents of
by passing the Juvenile Ju
addition to sixteen and
already subject to adult pr
targets thirteen, fourteen a
mit violent criminal acts
criminal system so "[t]he
sentences, be exposed to
trials instead of private
Juveniles: The New York
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York's tougher stand on j
from lenient and meaningl
niles including one fifteen
of violent crime who adı
and attempting to murder a

One scholar, in discussin
vides for the adult crimi
year olds, notes that:

> . . . developmental ps
> supports this legislative
> mon law judgment tha
> acquired the requisite
> for their criminal acts .
> which a youth become

therefore, a serious
mid to late teens
old).

Feld, *Juvenile Court*
Offender: Dismantli
MINN. L. REV. 167,

Recent research also
ber of juvenile homi
quate means of protect
court system:

It is well known th
proportionately large
. . the rate at which
lent crimes – homici
has been growing fa
adults are arrested f
which youths aged s
for violent crimes n
1975. . . . In Chicag
fifteen to twenty-fou
icides nearly tripled
homicide rate for
and over) and for w

Boland and Wilson,
Public Interest 22, 2

Although juvenile hon
are less likely to be
Hence, many scholars
niles as adults in order

Further, young of
involved in criminal act
statistics show that for
the number of person

age 18 increased 4
PARTMENT OF J
PORTS, CRIME I
26 (September 2
In 1978-79 alone,
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rose from 1,549 t
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The statutes, st
demonstrate that s
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stitutional safegua
does not.

**C. The Death P
Is Neither E
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Petitioner's sen
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this Court stated:

> . . . we are con
> of capital pun
> and when a lif
> offender, we
> invariably disp
> U.S. at 187.

Petitioner, howev
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WLF submit
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3) That the
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Profitt v. Flor
noted and app
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State v. Dixon:

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mon knowl
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> interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies . . . [283 So.2d 1, 9 (1973)]. *Profitt*, 423 U.S. at 251.

The manner in which Larry Crabtree was murdered and his identity as a peace officer sets his killing apart from the "norm of capital felonies".

Patrolman Crabtree no doubt believed he was making an ordinary traffic stop consistent with his duty to keep the highways safe for the public. After waving Petitioner's stolen car to the side of the road, Larry Crabtree simply approached Petitioner's vehicle. Petitioner's own words alone at that time justify the court's findings. He murdered Larry Crabtree for no other reason than:

> If the fucking cop harasses me, I'll shoot him. (Tr. 127).

Petitioner, of course, never learned whether Patrolman Crabtree was going to "harass" him. Instead, petitioner slowly reached behind his seat for the shotgun he had earlier sawed off and which a passenger had even attempted to put out of his reach. The petitioner loaded it, stuck it out the window, and fired it unprovoked into the chest of Larry Crabtree. Without looking back, Petitioner drove away stating:

> I would rather have shot an Officer than go back to where I live. (A. 93).

Clearly, the callous murder in question here is as cold-blooded as those examined by this and other Courts. *See, e.g., Profitt, supra; Dobbert v. Florida,* 432 U.S. 282 (1977); *Roberts v. Louisiana,* 431 U.S. 633 (1978); *Spinkellink v. Wainwright, supra,* 578 F.2d 610-612.

WLF also believes that the aggravating nature of Petitioner's crime is magnified by Larry Crabtree's position as a police officer. This Court has implicitly recognized that the imposition of the death sentence on the murderer of a peace officer is not disproportionate to the crime. In striking down a Louisiana capital punishment statute that made the death sentence mandatory if the victim was a police officer, this Court nonetheless noted:

> To be sure, the fact that the murder victim was a peace officer performing his regular duties may be regarded as an aggravating circumstance. *There is a special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property.*
>
> *Roberts v. Louisiana,* 431 U.S. 633, 636-37 (1978) (Emphasis added).

While the Oklahoma statute does not expressly provide that the killing of a police officer is an aggravating circumstance, the appellate court correctly found that:

> this killing of a peace officer in the performance of his duties was, . . ., 'shockingly evil' . . .
>
> *Eddings v. State,* 616 P.2d 1168.

Amicus Washington Legal Foundation believes that the State of Oklahoma properly considered this Court's ruling in *Roberts* and determined that it has a special interest in protecting peace officers. Nationwide, the

number of law enforcement officers killed in the line o duty is rising. FBI Reports at 309. In 1979, 106 peac officers were feloniously killed as compared to 93 i 1978. *Id.* From 1970 to 1979, 1,143 officers wer killed while performing their duties. *Id.* Officer Crab tree was one of them.

In addition, recent data indicates that over a te year period as many as 348 officers died in situation which parallel that in which Officer Larry Crabtree wa murdered. A total of 92 officers were killed whil investigating suspicious circumstances and persons; 6 died in premeditated ambush; 50 died in unprovoke attacks; and, 144 died in traffic pursuits. *Id.* at 310 Moreover, of the total number of law enforcemen officers that died over the same ten year period, 1,07 or 94.3 percent were killed by firearms. *Id.* at 312.

A closer breakdown of peace officer homicides show an overall increase in the number of persons *under* ag 18 who have been identified as having killed a peac officer. More precisely, 116 persons *under* age eigh een murdered peace officers between 1970 and 197 *Id.*

The unprovoked and premeditated murder of Office Larry Crabtree is reflected in these statistics. As wit other cases of law enforcement officer fatalities, littl consideration has been given throughout these proceed ings to what should be the major issue. Neither the Bri for Petitioner nor the briefs of *amici* in support of Pet tioner provide a single mention of the rights of Lar Crabtree, his family, his friends, the community i which he lived and worked, or society in general. Mon Eddings executed Larry Crabtree in violation of his mo fundamental right. The physical, psychological, a

economic impact of such violent crimes cannot be accurately measured, but neither can the magnitude of the cost be denied. *See* Exec. Order No. 4831, 42 Fed. Reg. 21339 (April 10, 1981) (Proclaiming National Victim's Rights Week, 1981); Annual Report to the American Bar Association by the Chief Justice of the United States, 67 ABA J. 291 (March, 1981).

The courts below also found that the crime was committed for the purpose of avoiding a lawful arrest, *Eddings v. State*, 616 P.2d 1168-69, and that Petitioner constituted a continuing threat to society. *Id.* at 1169. The latter is of particular concern here.

Petitioner's claim that he "had no serious record of criminal behavior" (Brief for Petitioner at 21) best indicates the frame of reference which he brings to this case. As the Oklahoma appellate court noted, "petitioner had an extensive juvenile record." 616 P.2d at 1169. He was involved in four break-ins, tampering with a motor vehicle, mail box vandalism, and an assault with intent to do bodily harm. (A. 105-107, 118). His statements after the murder of Larry Crabtree compounded that record. Speaking to police officers on two separate occasions he stated:

> Now I have shot one of you people, and I'll get you too if you don't turn this light out. (A. 103)
>
> * * *
>
> If I get loose I would shoot you all too. (A. 77, 82)

Thus, notwithstanding Petitioner's age, the record upholds the lower courts' findings that Petitioner constituted a continuing threat to society.

The courts below also considered the circumstances mitigating Petitioner's crime. He presented four professional witnesses at the sentencing portion of his trial.

Those witnesses testified as to Petitioner's pa
history, intelligence, maturity, and mental
See Eddings v. State, 616 P.2d 1169-70. Non
that Petitioner knew right from wrong at th
pulled the trigger. *Id.* Similarly, a psychiat
psychologist who testified at the certificatic
on behalf of the State found "that the juvenile
difference between right and wrong and was
understanding his actions." *In Re Matter of*
P.2d 1340, 1343 (Okla. Crim. App. 1978), *ce*
436 U.S. 921 (1978).

In short, Petitioner has had ample oppo
urge mitigating circumstances. However, as
homa appeals court found, the mitigating fa
insufficient to overcome the starkly brutal na
crime:

> the trial court found only one – the pet
> youth. As stated earlier, the District Co
> cated great weight had been given to thi
> but, nevertheless, found it could not ove
> the aggravating circumstances of the case.
> have given serious consideration to the pet
> youth. But the aggravating circumstance
> case are very serious; and we, too, have to c
> that the petitioner's youth cannot outweig
> 616 P.2d 1170.

Amicus, the Washington Legal Foundatio
that the decisions below accord in every re
the previous decisions of this Court. Based u
inous testimony and first hand observation
nesses, the trial court found that Petitioner w
subject to capital punishment. The appeal
viewed all of the evidence, carefully weighed a
factors, and found that the punishment fit th

the criminal. With all due respect, a contrary de
this Court would make a mockery of its previ
sions and the conscientious efforts of the State
form their criminal sanctions to the dictates of
stitution.

III.

ADOPTING AN ABSOLUTE BAR TO CAPITAL P MENT WOULD BE CONTRARY TO PUBLIC POL AN UNWARRANTED JUDICIAL INTERFERENC LEGISLATIVE PREROGATIVES.

In essence, Petitioner is ask g this Court to
previous pronouncements on the constitutionali
ital punishment statutes. Beginning with the *G*
sion, this Court has established a framework fo
decision-making in death penalty cases which
balancing a variety of factors to ensure that a
complies with the Eighth Amendment. Ad
absolute bar to capital punishment solely on
of age would undercut the validity of this Co
vious decisions and move it beyond judicial
ations into a realm properly left to State an
legislatures.

The Court has recognized that its role in de
application of capital punishment is limited. In *M*
v. California, 402 U.S. 183 (1971), the Court
through Justice Harlan that:

> In light of history, experience and the
> limitation of human knowledge, we find i
> impossible to say that committing to the u
> meled discretion of the jury the power to pro
> life or death in capital cases is offensive to a
> in California. *The States are entitled to assu*
> *jurors confronted with the truly awesome*
> *sibility of decreeing death for a fellow hum*

> *act with due regard for the conse*
> *decision and will consider a variet*
> *For a court to attempt to catalog*
> *factors in this elusive area could in*
> *expand the scope of consideratio*
> *circumstances would ever be reall*
> infinite variety of cases and fac
> would make general standards ei
> 'boiler-plate' or a statement of the
> jury would need. (emphasis added)

402 U.S. 207-08.

In according due deference to the
ture, this Court has stated:

> . . . in assessing a punishment sel
> cratically elected legislature agai
> tional measure, we presume its val
> heavy burden rests on those who
> representations of the people.

Gregg, supra, 428 U.S. at 175.

Yet, petitioner suggests no other r
fact of his age to support invalidatin
homa's legislative determination. Th
the trial and appellate courts impo
death sentence in a clear case of fi
accord with a carefully-crafted statu
turning the Oklahoma statute and e
lute age below which no death sente
simply is not warranted by the arg
the Petitioner in the case at bar. As t

> The value of capital punishmen
> crime is a complex factual issue
> which properly rests with the legis
> evaluate the results of statistical s

their own local conditions and with a
approach that is not available to to the

Gregg, supra, at 186.

Moreover, such line-drawing would ha
far beyond the instant case; it would a
twenty-eight State statutes as well as th
lation presently under consideration wh
both the trial of certain juveniles in adu
ceedings and the death sentence in capital

It cannot be disputed that the State
right and responsibility to protect their
deem appropriate within constitutional
courts must protect individual rights, th
their focus become blurred to the fact t
justice system must protect both the rig
and the rights of each individual law-abi
circumscribing the States' ability to
punishment beyond the dictates of th
cases, this Court would effectively remo
of the legislatures to make decisions wh
within their realm. Thus, this Court m
tioner's sentence as a matter of sound pub

CONCLUS

The Washington Legal Four
court below correctly sustaine
death penalty in this case. The
Petitioner is especially heinou
slaying of peace officers strik
society's ability to protect itse
penalty statute is a constitutio
under these circumstances reg
Petitioner was not biologically

Respect

Dani
Gene

Paul
Dire

Nich
Litig

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W
August 12, 1981 (2

**Amicus* wishes to express its ap
Fadden, a legal intern, for her assis
brief.